
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES – GENERAL

Case No.: 2:22-cv-08833-FWS-AS

Date: January 31, 2023

Title: Elizabeth Thomas v. BV Lakewood Carson SE LLC

Present: **HONORABLE FRED W. SLAUGHTER, UNITED STATES DISTRICT JUDGE**

Melissa H. Kunig
Deputy Clerk

N/A
Court Reporter

Attorneys Present for Plaintiff:

Attorneys Present for Defendant:

Not Present

Not Present

PROCEEDINGS: (IN CHAMBERS) ORDER DISMISSING CASE

On December 9, 2022, the court dismissed Plaintiff’s complaint for lack of subject matter jurisdiction. (Dkt. 8.) Plaintiff filed an amended complaint, and on January 4, 2023, the court dismissed Plaintiff’s amended complaint for failure to state a claim on which relief could be granted pursuant to 28 U.S.C. § 1915’s mandatory screening requirement applicable to complaints filed by plaintiffs seeking to proceed *in forma pauperis*. (Dkt. 15.) The court granted Plaintiff leave to amend the operative complaint, and ordered Plaintiff to file any second amended complaint within twenty-one days of the court’s Order, or on January 25, 2023. (Dkt. 15 at 4.) Plaintiff was advised that “[f]ailure to timely file a Second Amended Complaint in compliance with this Order will result in this action being dismissed for failing to prosecute, and/or comply with a court order, with or without further notice.” (*Id.* (citing Fed. R. Civ. P. 41(b); *Link v. Wabash R.R.*, 370 U.S. 626, 630-31 (1962); *Pagtalunan v. Galaza*, 291 F.3d 639, 640-43 (9th Cir. 2002)).) As of the date of this Order, Plaintiff has not sought to file a second amended complaint. (*See generally* Dkt.)

In considering whether to dismiss a cause for failure to prosecute or failure to comply with a court order, the court weighs five factors:

- (1) the public’s interest in expeditious resolution of litigation;
- (2) the court’s need to manage its docket;
- (3) the risk of prejudice to the

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defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.

Hernandez v. City of El Monte, 138 F.3d 393, 399 (9th Cir. 1998) (quoting *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)). “Dismissal is appropriate ‘where at least four factors support dismissal, or where at least three factors strongly support dismissal.’” *Neal v. Reslan*, 2020 WL 754366, at *1 (C.D. Cal. Jan. 16, 2020) (citing *Ferdik v. Bonzelet*, 963 F.2d 1258, 1263 (9th Cir. 1992)) (internal quotation marks omitted).

As to the first factor, “[t]he public’s interest in expeditious resolution of litigation always favors dismissal.” *Pagtalunan*, 291 F.3d at 642 (quoting *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir.1999)). Considering the deadline to file a second amended complaint has passed and Plaintiff has not indicated she intends to file an amended complaint, this factor weighs in favor of dismissal. Additionally, the delay in this action “has consumed some of the court’s time that could have been devoted to other cases on the docket.” *See id.* (“It is incumbent upon the Court to manage its docket without being subject to routine noncompliance of litigants.”) (citing *Ferdik*, 963 F.2d at 1261). Though “the pendency of the lawsuit is not sufficiently prejudicial itself to warrant dismissal,” *Yourish*, 191 F.3d at 991, Plaintiff’s lack of an “excuse for [Plaintiff’s] default on the [court’s] order indicates that there was sufficient prejudice to Defendants from the delay that this factor also strongly favors dismissal,” *id.*

The public policy favoring the disposition of cases on their merits generally weighs against dismissal. *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998). However, the court has twice found that Plaintiff’s operative complaint did not state a claim on which relief could be granted, first for failing to plead subject matter jurisdiction and subsequently for inadequately stating a claim for relief on its merits. Finally, the court finds less drastic sanctions are not available because Plaintiff has not sought to file an amended complaint as ordered by the court.

Accordingly, the court finds dismissal of this action is warranted considering the totality of the relevant factors. Therefore, the court **DISMISSES** this action without prejudice as to any action filed in state court.

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IT IS SO ORDERED.

Initials of Deputy Clerk: mku